

United States District Court

Eastern District of California

Larry Giraldes,

Plaintiff,

No. Civ. S-01-2110 LKK PAN P

vs.

Order

T. Prebula, et al.,

Defendants.

-oOo-

Plaintiff moves to modify the schedule made January 7, 2005, to extend time for discovery. Defendants oppose.

An order governing discovery was made April 16, 2004.

Pursuant to the original schedule, discovery closed December 27, 2004. The Clerk of the Court duly served the schedule on plaintiff but the postal service returned it September 13, 2004, because time for forwarding plaintiff's mail expired. December 1, 2004, I recommended this action be dismissed. See L. R. 83-183(b), 83-182(d). December 15, 2004, plaintiff notified the

court of his new address and so December 29, 2004, the clerk served the findings and recommendations on plaintiff at his new address. To compensate for the time lost because of plaintiff's address change, January 7, 2005, I amended the schedule so discovery closed, and all motions necessary to resolve discovery disputes were to be filed no later than March 2, 2005.

A schedule may be modified only upon a showing of good cause, viz., the moving party demonstrates he cannot meet the deadline despite exercising due diligence. Fed. R. Civ. P. 16(b); Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992).

Plaintiff asserts he could not timely complete discovery because of his address change and because prison lockdowns have limited his time in the law library. I once amended the schedule to compensate for plaintiff's address change and plaintiff does not explain why he needed access to the law library to discover facts.

Plaintiff fails to demonstrate he was unable to meet the deadline despite due diligence.

I therefore deny plaintiff's March 28, 2005, motion.

Dated: November 29, 2005.

/s/ Peter A. Nowinski

PETER A. NOWINSKI
Magistrate Judge